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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,546	08/13/2001	Angelo Speranza	Rockco P32AUS	7144

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EXAMINER

TRAN, THUY VAN

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/928,546

Applicant(s)  
Speranza

Examiner  
First Last

Art Unit  
1234



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Nov 4, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 9-13, 15-41, and 47-49 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9-13, 15-41, and 47-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on Nov 4, 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-162)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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## **DETAILED ACTION**

### ***Reissue Applications***

1. While there is concurrent litigation related to this reissue application, action in this reissue application will NOT be stayed because of applicant's request that the application be examined at this time. Due to the related litigation status of this reissue application, **EXTENSIONS OF TIME UNDER THE PROVISIONS OF 37 CFR 1.136(a) WILL NOT BE PERMITTED.**

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 4, 2002 has been entered.

Claims 2-5, 7, 9-13, 15-41 and 47-49 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application

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for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

The limitation "manually maneuverable rack" is broaden in claims 2, 13, 21, 23, 41, 47 and 49, respectively, from the amendment B, office paper No. 7 of the original application.

Re claim 2, the surrendered limitation "a refrigerated transfer vehicle" in the original application is omitted. Same problem occurs in claims 13, 22, 23, 32 and 47 as well.

The limitation "a movable container" was argued as regard to applicant's invention in office paper No. 7, page 4 is omitted in claims 2, 13, 23, 32 and 47, respectively.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 23-31 and 41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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The disclosure fails to adequately disclose how the heating and cooling system may determine which portion of the tray needed to be warmed and which portion of the tray needed to maintain cool when both the heating and cooling units operate at the same time.

Therefore, the disclosure is not sufficiently detailed to enable one of ordinary skill in the art to make or use the claimed invention without undue experimentation.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-5, 7, 9-13, 15-41 and 47-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The current application is rejected on the ground of undue multiplicity of claims that is, unreasonable in view of the nature and scope of applicant's invention and the state of the art as set forth in MPEP 2173.05(n).

Due to the time constrained, Applicant was not invited, by telephone, to select a reasonable number of claims for examination. Therefore, in response to this office action, Applicant is required to elect no more than 20 claims and no more than 3 independent claims for examination.

Re claim 7, it is unclear what applicant meant by "a separate receptacle".

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*Claim Rejections - 35 USC § 102*

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1-5, 7, 9-13, 15-41, and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Colato et al. 4,103,736.

Colato et al. '736 disclose a method of preparing and transporting food comprising the steps of preparing food at a first location; apportioning the prepared food onto a plurality of trays 14; loading the trays onto a manually maneuverable rack C, transporting the rack to a second location spaced from the first location by a refrigerated vehicle (column 2, lines 62-68); transferring the rack C into a movable receptacle Ca, heating and/or cooling the food while the trays 14 are supported by the rack C at the second location.

Re claims 1, 3-5, 18 and 20, Colato et al. '736 further disclose that when the meals on the trays have been consumed, the trays are return to the racks which are returned to the first location by the transferred vehicle (column 2, lines 22-37).

Re claims 7-12, see column 1, line 45 to column 3, line 8.

Re claims 25, 31, 34 and 40, the heating system and cooling system (as broadly claimed) of Colato et al. reference are demountably coupled to the receptacle Ca.

Re the recitation "a maneuverable rack, lacking any heating and cooling means", found in claim 41 could be performed by Colato reference since they are removable.

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9. Claims 2-5, 7, 10-13, 15 and 47 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Stromqvist 3,261,650.

Stromqvist '650 discloses a plurality of methods of preparing, transporting and dispensing food from a food prepared location (kitchen) to a remote second location (consumers). See Figures 9-16, column 1, line 11 to column 2, line 15.

***Claim Rejections - 35 USC § 103***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 41-46 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Stromqvist 3,261,650 in view of either Pennington et al. 5,195,973, Liebermann 5,404,935 or Yerman 5,240,320.

Stromqvist '650 discloses method of preparing, transporting and dispensing food comprising the steps of preparing the food at a first location, apportioning the food onto a plurality of trays, stacking the plurality of trays, once apportioned with food, in a maneuverable rack, loading the rack onto a transport vehicle for transportation to a second location, transferring the rack to a movable receptacle having heating means, activating the heating means to regenerate the food, dispensing the trays to consumers for consumption once the food is sufficiently regenerated.

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Stromqvist does not disclose a movable receptacle having a heating means and a cooling means. Each of the Pennington et al. '973, Liebermann '935 and Yerman '320 separately discloses that a receptacle having a heating means and a cooling means is well known in the food distributing art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the receptacle of Stromqvist to including a cooling means in order to keep hot food remaining hot and cool food remaining cool as being well known in the food distributing art.

### *Response to Arguments*

12. Applicant's arguments filed November 8, 2002 have been fully considered but they are not persuasive.

Applicant argues that the pending claims do not recite any steps specifically directed to "determination" of which portion of a tray needs to be warmed or maintained cool, nor under the particular condition of determining this when both heating and cooling units are operating at the same time. However, the claimed invention, such as claim 23, positively recited "activating a heating system and a cooling system to regenerate the portioned food on the at least one tray on the rack". Therefore, the disclosure is not sufficiently detailed to enable one of ordinary skill in the art to make or use the claimed invention without undue experimentation.

Applicant argues that Colato et al. '736 reference fails to disclose the recitation loading a maneuverable rack at a first food preparation location onto a refrigerated vehicle. Colato



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discloses the rack can be transported by an appropriated vehicle. When transporting food, an appropriated vehicle is a refrigerated vehicle.

Applicant further arguments regarding other recitations with respect to Colato reference, paragraph 8 above has been clearly pointed out the claimed limitations.

On page 22, paragraph 2, Applicant argues that Stromqvist '650 fails to disclose "..... and a heating system and a cooling system are activated to regenerate the food on the rack positioned in the receptacle". Claims contains the above mentioned recitation was not rejected under 35 U.S.C. 102 by Stromqvist.

Applicant further argues that Pennington et al. '973 do not disclose a removable rack and tray support. The examiner only relied on the teaching of having a heating system and a cooling system of Pennington. Same thing with the other two references.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy v. Tran whose telephone number is (703) 308-2558.

TVT (TVT)

February 10, 2003

THUY V. TRAN (GAU3652)  
Thuy Tran  
2/10/03